

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

	:	
	:	Case No. 14-50812
WILLIAM B. HENNESSY	:	
LOUISE A. HENNESSY,	:	
	:	Chapter 7
	:	
Debtor(s).	:	Judge PRESTON

**MOTION TO AVOID JUDGMENT LIENS UNDER
11 U.S.C. §522(f)(1)**

Now come the Debtors referenced in the above captioned case and pursuant to 11 U.S.C. §522(f)(1), request this Court to issue an order AVOIDING the following judgment liens against their residential real estate located at 5874 Leven Links Ct., Dublin, Ohio 43017 (“Property”):

OHIO DEPARTMENT OF TAXATION (7/31/2010) –	EXHIBIT A
OHIO DEPARTMENT OF TAXATION (6/12/2011) –	EXHIBIT B
CAPITAL ONE BANK USA, N.A. (10/24/2012) –	EXHIBIT C
CITIBANK, N.A. (3/20/2013) –	EXHIBIT D
AMERICAN EXPRESS BANK, FSB (9/20/2013) –	EXHIBIT E
MUIRFIELD ASSOCIATION, INC. (11/7/2013) –	EXHIBIT F

1. On November 11, 2011, the Debtors were sued by the first mortgage holder on the Property in the Court of Common Pleas, Franklin County, Ohio (“FCCP”) in *Bank New York Mellon c/o Bank of America, N.A. v. William B. Hennessy et al.*, Case No. 11 CV-11-14777.
2. With the exception of the two (2) liens of the Ohio Department of Taxation, the remaining liens were filed in the FCCP after service of process of the above-described foreclosure complaint. Thus, the judgment liens held by Capital One Bank, N.A., Citibank, N.A., American Express Bank, N.A. and Muirfield

Association, Inc. are already barred by the doctrine of *lis pendens*. However, the certificates of judgment which correspond to such creditors remain active or pending.

3. The Debtors filed their Chapter 7 case on February 13, 2014. At that time, the Property was valued at \$471,000.00. Schedule A. The Debtors claimed their available homestead exemptions against the Property. Schedule C.
4. On or around June 24, 2013, the Debtors and Bank of America, N.A.'s successor servicer, Select Portfolio Servicing, Inc. ("SPS"), entered into a loan modification agreement which significantly reduced the principal. As of the loan modification's effective of July 1, 2013, the total amount owed to SPS was \$692,280.07. EXHIBIT G, pg 2 ¶3A.
5. Based upon the modification however, at the time of the bankruptcy filing, the Debtors owed SPS approximately \$404,000.00 in principal. However, SPS's loan modification does not constitute a release or satisfaction of the obligations in the original loans documents unless the Debtors complete the payments as required by the modification agreement. Thus, SPS's mortgage remains secured by the original total amount referenced in ¶4 as of the date of the Debtors' Chapter 7 case filing until the Debtors satisfy the terms of the modification agreement. EXHIBIT G, pg 4¶4E.
6. In addition to SPS's mortgage, an additional consensual mortgage to Garland Knight III in the amount of \$39,000.00 was recorded in the Franklin County, Ohio Recorder's Office on February 8, 2010.

7. The Judgment Liens listed above and identified in EXHIBITS A-F are judicial liens within the meaning of 11 U.S.C. §522(f)(1)(A) that could possibly be attached to the Debtors' Property.
8. Each of the Judgment Liens listed above and identified in EXHIBITS A-F impair the Debtors' lawfully claimed exemptions in the Property within the meaning of 11 U.S.C. §522(f)(2)(A). The sum of the consensual mortgages to SPS and Garland Knight III, and amount of the amount of the Debtors' exemptions exceed the value of the Property.

WHEREFORE, pursuant to 11 U.S.C. §522(f)(1), the Judgment Liens described above and identified in EXHIBITS A-F must be permanently AVOIDED.

Respectfully submitted,

/s/ James E. Nobile
James E. Nobile (0059705)
Nobile & Thompson L.P.A
4511 Cemetery Rd., Suite B
Hilliard, Ohio 43026
(614) 529-8600
(614) 529-8656 (fax)
jenobile@ntlegal.com
Attorneys For Debtors

CERTIFICATE OF SERVICE & FORM 20A NOTICE

The undersigned hereby certifies that on NOVEMBER 12, 2014 a true and authentic copy of the foregoing, MOTION TO AVOID LIEN was served upon the following registered ECF participants, electronically, through the Court's ECF system at the email address registered with the Court:

The U.S. Trustee
Larry J. McClatchey, Chapter 7 Trustee

And upon each individual/entity set forth below by regular U.S. Mail, postage prepaid:

William and Lousie Hennessy
5824 Leven Links Ct.
Dublin, OH 43017

Select Portfolio Servicing, Inc.
P.O. Box 65250
Salt Lake City, UT 84165-0250

Garland M. Knight III
110 Touraine Road
GrossePointe Farms, MI 48236

Muirfield Association, Inc.
8372 Muirfield Drive
Dublin, OH 43017

Kaman & Cusimano, LLC
c/o Magdalena E. Myers
470 Olde Worthington Rd., Suite 460
Columbus, OH 43082

Ohio Dept of Taxation
P.O. Box 2057
Columbus, OH 43218-2057

Ohio Dept. of Taxation
Ohio Attorney General
150 E. Gay St.
Columbus, OH 43215

Attorney General, OHIO
Ross & Midian, LLC
309 S. 4th Street, Ste. 100
Columbus, OH 43215

Ohio Dept. of Taxation
ATTN: Bankruptcy Division
PO Box 530
Columbus, OH 43216-0530

CAPITAL ONE BANK USA NA
15000 CAPITAL ONE DRIVE
RICHMOND, VA 23238

Capital One Bank (USA), N.A.
American InfoSource LP
PO Box 71083
Charlotte, NC 28272-1083

JOHN B C PORTER
WELTMAN,WEINBERG,REIS
3705 MARLANE DR
GROVE CITY, OH 43123

CITIBANK NA
4740 121 ST STREET
URBANDALE, IA 50323

ROBERT N LURIE
JAVITCH BLOCK RATHBONE
19TH FLOOR
1100 SUPERIOR AVENUE
CLEVELAND, OH 44114

PYOD LLC
Resurgent Capital Services
PO Box 19008
Greenville, SC 29602

AMERICAN EXPRESS BANK FSB
c/o SCOTT E. COLLISTER
2300 LITTON LANE, STE 200
HEBRON, KY 41048

Becket and Lee LLP
Attorneys/Agent for Creditor
POB 3001
Malvern, PA 19355-0701

**AND BY CERTIFIED MAIL UPON THE NOTED OFFICER OF THE BELOW
FEDERALLY INSURED INSTITUTIONS (Fed. R. Bankr. P. 7004(h)):**

Capital One Bank (USA), N.A.
c/o CEO Richard D. Fairbank
4851 Cox Road
Glen Allen, VA 23060

Citibank, N.A.
c/o CEO Barbara Desoer
701 East 60th Street North
Sioux Falls, SD 57104

American Express Bank, FSB
c/o CIO Exec. VP Steve Squeri
4315 South 2700 West
Salt Lake City, UT 84184

/s/ James E. Nobile
James E. Nobile (0059705)
Nobile & Thompson L.P.A.

Form 20A NOTICE

The Debtor(s) has/have filed papers with this Court requesting the relief sought in the MOTION TO AVOID JUDGMENT LIENS enclosed with this NOTICE.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to GRANT the relief requested in the enclosed MOTION TO AVOID JUDGMENT LIENS, or if you want the Court to consider your views on the MOTION, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion/objection**, you or your attorney must:

1. File with the Court, a written response to the MOTION expressing your objection or viewpoint. The response is to be filed with the Clerk of Courts at 170 N. High St. Columbus, Ohio 43215.

If you mail your written response to the Court for filing by the Clerk, you must mail it early enough so the Court will **receive** it on or before the date stated above.

2. You must also mail a copy of the written response to the Debtor(s) at the address listed on the front of this paper entitled Certificate of Service.
3. You must also mail a copy of the written response to **Nobile & Thompson L.P.A., 4876 Cemetery Road, Hilliard, OH 43026**.
4. Finally, you must attend any Court hearing scheduled to consider this MOTION. The Court will likely schedule an oral hearing and serve only those parties who have in fact filed a written response.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the MOTION and may enter an order granting that relief.